IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2880 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ELLISBRIDGE SHOPPING CENTRE OWNER'S ASSOCIATION - Petitioner(s)
Versus
MAKWANA PUSHPABEN KANTILAL - Respondent(s)

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Appearance :

NANAVATI ASSOCIATES for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 27/12/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 30.10.01 passed by the Labour Court, Ahmedabad in Reference (LCA) No. 2122/91 whereby the Labour Court has directed the petitioner to reinstate

the respondent with 75% backwages .

2. The brief facts of the case are that the respondent was serving as a part timer mainly engaged in doing cleaning work of the premises between 9:00am to 1 p.m. Apart from the said work, the respondent was also doing similar work at other places. Since the respondent was getting more work from outside ,she was irregular in her work with the petitioner Association and was negligent in her work. In view of the said fact she was requested to improve herself.

3. In the month of July 1987 on the request of the respondent the petitioner had granted a loan of Rs. 500/- on a condition that she would pay back the loan amount every month by deducting at Rs. 50/- from her salary. Despite such help it was found that she was negligent and more interested in doing outside work. Therefore on 16.7.91 the petitioner discharged the respondent

from service.

4. The respondent therefore raised a dispute which was referred to the Labour Court and registered as Reference No. 2122/91.

5. The petitioner filed its written statement wherein at para 11 it was stated that the petitioner is ready and willing to keep the respondent in work without prejudice to the rights and contentions raised in the reference. No reply has been filed to the written statment and the respondent did not report for the work. The Labour Court after hearing the parties passed the aforesaid award which is challenged in this petition.

6. Learned counsel for the petitioner submitted that the the respondent workmen has been offered work but she refused to resume duty even before the Labour Court. Learned Counsel further submitted that the respondent failed to report for duty and only demanded backwages. He

pointed out that the respondent was working at other places and therefore she was not interested in joining duty with the petitioner. The Learned Counsel therefore submitted that the present petition deserves to be allowed. Learned counsel for the respondent workman submitted that the Labour Court passed the award after considering all the facts and circumstances of the case and therefore no inteference may be caused in this petition.

7. As a result of hearing and perusal of the record it is found that the petitioner had offered work to the respondent but the refused to resume duty. From the record it is clear that it is not a case of retrenchment. It is also found that without joining duty the respondent insisted for compensation. There is a clear indication from the record that the respondent was not interested in joining duty with the petitioner. Therefore I am of the view that the Labour Court has committed an error in passing

the impugned award and therefore the same is required to be quashed and set aside.

8. In the premises aforesaid, this petition is allowed. The impugned award is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(K.S.Jhaveri, J)

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